



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Universal Building Maintenance, Inc.

File: B-282456

Date: July 15, 1999

Christopher M. Wawack, Esq., Joseph A. Camardo, Jr. Law Office, for the protester.
John M. Hewins, Esq., General Services Administration, for the agency.
Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Even under simplified acquisition procedures, award decision is not reasonable where the record does not provide any documentation or explanation which supports the price/technical tradeoff, and the award determination appears to be based entirely on a comparison of total technical point scores without consideration of protester's lower technically scored, but low priced proposal.
 2. Agency improperly attributed past performance of parent company or its other subsidiaries to awardee where record does not establish that parent company or subsidiaries will be involved in the performance of the protested contract.
-

DECISION

Universal Building Maintenance, Inc. (UBMI) protests the General Services Administration's (GSA) award of a fixed-price contract to Service Star USA, Inc. under request for proposals (RFP) No. GS-08P-99-JBC-0006, for custodial services at the New Customs House in Denver, Colorado. UBMI principally contends that its proposal, as well as the awardee's proposal, was improperly evaluated, and that the agency's selection decision was unreasonable.

We sustain the protest.

The RFP, issued as a small business set-aside, contemplated the use of commercial item procedures. This requirement also used simplified acquisition procedures as authorized by Federal Acquisition Regulation (FAR) Subpart 13.5. This subpart authorizes as a test program the use of simplified procedures for the acquisition of

commercial supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5 million dollars. FAR § 13.500.

The RFP called for firms to submit written technical proposals limited to 10 pages. In their technical proposals, the firms were asked to address past performance, types of equipment, and organizational structure. For each of these items, the RFP described the standard to be met. Of relevance here, for past performance, the standard would be met when “the offeror demonstrates that they have performed similar work of comparable size to that described in this solicitation under at least five (5) contracts,” and “[t]he past performance on similar contracts was satisfactory or better.” The government reserved the right to request additional references and to query sources not specifically identified by the offeror. The RFP also called for oral presentations where offerors would be asked to address quality control and plan of operation. A price proposal also was to be submitted with the technical proposal. The amended RFP provided that award would be made to the responsible firm whose proposal was considered most advantageous to the government, technical factors and price, when combined, being considered equal in value. RFP at 38-40.

On January 15, 1999, the due date for proposals, 18 proposals were received. Oral presentations were scheduled, and all but one firm made presentations. A competitive range of nine offerors was established. By letter, each competitive range offeror was sent written questions concerning its price proposal, and was requested to submit a best and final price proposal. The nine offerors submitted revised price proposals. UBMI significantly reduced its total price in its revised price proposal. As a result, its price was 24 percent less than the government estimate. Statement of Fact and Memorandum of Law at 9. The evaluation board, consisting of three members, prepared a document called “Recommendation of Awardee” for the contracting officer. The document provided a narrative summary of the strengths and weaknesses of each offeror’s proposal, and rankings of the offerors based on points assigned to each offeror after evaluation of their technical proposals and oral presentations. Also, there were price charts summarizing the prices proposed by each offeror for the services. Of particular relevance is the chart which ranked the competitive range offerors by their technical scores with each firm’s total price. This chart showed that the awardee and another firm received a point score of 19. Four other firms received scores ranging from 15 to 17. UBMI received a score of 14, but submitted the lowest price among the competitive range offerors. UBMI’s price was 22 percent lower than the awardee’s price. The last page of the document contains the following statements: “The evaluation board hereby recommends award to Service Star USA, Inc., . . .” and “It is the opinion of the evaluating board that Service Star USA, Inc. provided the best value.” The signatures of the members of the evaluation board committee were below the statement. Below their signatures, under “Approved By,” is the contracting officer’s name and signature. Agency Report, Tab 32, Recommendation of Awardee.

Award was made to Service Star USA, Inc. on March 18, and on April 1, the agency debriefed the protester. There is an unsigned document in the agency file regarding

the debriefing, which memorializes the contracting officer's presentation at the debriefing. The contracting officer essentially stated that UBMI lost because its technical score "contrasted to the successful offeror and others was not high, in fact was middle of the road overall." The contracting officer also stated that "[b]y the scoring, . . . weighing technical and price as equals . . . [UBMI] was not considered as the best value particularly with the low technical rating." Finally, the contracting officer stated, "I looked at their price and considered it so low as to endanger performance on this contract." Agency Report, Tab 25, Undated Memorandum, at 16. This protest followed.

The protester argues that the contracting officer performed an inadequate price/technical tradeoff when it awarded to Service Star USA, Inc. at a price 22 percent above that proposed by UBMI. UBMI argues that the record shows that the contracting officer basically adopted without explanation the evaluation board's recommendation based on the higher total point score for technical factors given to the proposal of Service Star USA, Inc. The protester points out that the evaluators and contracting officer do not identify any deficiencies in UBMI's low priced proposal, or state why Service Star USA, Inc.'s proposal was considered more advantageous and worth the price premium. Protester's Comments at 11-12.

The agency argues that it performed a proper price/technical tradeoff. It points out that this acquisition was conducted under simplified acquisition procedures which do not require a formal source selection process or the detailed documentation required under FAR Part 15 applicable to negotiated acquisitions. It argues that "the Contracting Officer, through the technical evaluation panel, carefully applied the various criteria for award and arrived at a well reasoned well documented conclusion as to the offeror that presented the best value." Agency Additional Statement at 13, 11-14. Although not contemporaneously documented, the contracting officer states that she met with the evaluation panel and verbally discussed its recommendations for award. The panel recommended the top four technical offerors in descending order as potential awardees. After discussing the advantages and disadvantages of each of the four proposals, "the Contracting Officer ratified the findings of the technical evaluation panel and chose from the list of 4 the highest technical lowest priced proposal." Agency Additional Statement at 3.

Simplified acquisition procedures are designed to, among other things, reduce administrative expenses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. FAR § 13.002. Although the procedures for simplified acquisitions do not require detailed justifications supporting a best value determination, the FAR requires that the contracting officer evaluate proposals “on the basis established in the solicitation” and support “the award decision if other than price-related factors were considered in selecting the supplier.” FAR §§ 13.106-2(a)(2), 13.106-3(b)(3)(ii). Thus, even when using simplified acquisition procedures, an agency must conduct the procurement consistent with a concern for fair and equitable competition and must evaluate proposals in accordance with the terms of the solicitation. See National Aerospace Group, Inc., B-281958, B-281959, May 10, 1999, 99-1 CPD ¶ ____ at 3; Sawtooth Enters., Inc., B-281218, Dec. 7, 1998, 98-2 CPD ¶ 139 at 3. In reviewing protests against an allegedly improper simplified acquisition evaluation and selection decision, we examine the record to determine whether the agency met this standard and exercised its discretion reasonably. Sawtooth Enters., Inc., *supra*.

In addition, as applicable here, there are several FAR provisions governing commercial item acquisitions that require the agency to explain and document its award decision. Under FAR Subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Items, which the agency recognizes is applicable here, the contracting officer is to “[s]elect the offer that is most advantageous to the Government,” and to “[f]ully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.” FAR § 12.602(c); Agency Additional Statement at 12. Also, under the test program for commercial items, the agency is required to include in the contract file “[a]n explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.” FAR § 13.501(b)(3). Here, we conclude that the selection decision was flawed because the contracting officer made no qualitative comparison of the technical differences between the proposals to determine whether the awardee’s technical superiority justified the price premium. Further, the award decision was not adequately supported and documented.

The contemporaneous record shows that the contracting officer’s selection decision consisted of her signing off on the evaluation panel’s recommendation. Agency Report, Tab 32, Recommendation of Awardee. There is no evidence in the record that the contracting officer actually considered whether the relative differences in the proposals, as reflected by the point scores, represented any meaningful qualitative differences that warranted the payment of the price premium to the awardee. In fact, the contracting officer states that she basically disregarded the protester’s low price because its proposal was not among the top four technically rated proposals based on the points. The tradeoff was limited to the top four technically ranked firms. Agency Additional Statement at 3. Here, the record clearly shows that the award decision was based on the point scores, and that the

contracting officer “ratified” the evaluation panel’s recommendation without any consideration of the protester’s proposal.

The contracting officer suggests, after the fact, that she basically did not consider the protester in her “trade-off” decision because UBMI’s low final price was so low as to endanger performance. To the extent that the agency believed that UBMI, a small business, was incapable of performing at its proposed price, this was essentially a nonresponsibility determination and the agency was required to refer the matter to the Small Business Administration (SBA) for review under its certificate of competency (COC) procedures. 15 U.S.C. § 637(b)(7) (1994); FAR § 19.602-1(a).

We note that the narratives the evaluation panel submitted with its award recommendation do not indicate any significant concern with UBMI’s proposal. The narrative identifies several strengths for UBMI including its 18 different GSA contracts, the use of a dedicated inspector/supervisor, and the use of an onsite computer for the supervisor. Weaknesses identified by the panel included the type of vacuum to be used by UBMI and the firm’s quality control plan. However, the panel also identified strengths and weaknesses in Service Star USA, Inc.’s proposal. Apart from the point score rankings, there was no attempt to compare the merits of these proposals or to document any reason that UBMI was not eligible for award. Simply, the record does not show that the award decision included any consideration of UBMI’s low priced proposal. Accordingly, we conclude that the agency failed to support and document the selection decision as required by the FAR for this type of acquisition.

The protester also argues that the agency improperly evaluated Service Star USA, Inc.’s past performance by considering the contracts of Service Star’s “affiliate,” its parent company, Star Group International, Inc. Protester’s Comments at 3-7. The awardee received a consensus score of 2 for past performance based on individual scores of +1, +1, and 2. The score sheet for Service Star USA, Inc. contains the following comment: “Current + past exceeds criteria in similar performance + great reference checks.” Agency Report, Tab 3, Service Star Contract and Supporting Documentation, at 1. The record shows, however, that Service Star USA, Inc. is performing only one of the five referenced contracts. In fact, although not made clear by the awardee in its written proposal, two of the five contracts listed were performed by Commercial Building Services, Inc., and two other contracts were performed by Service Star Building Cleaning, Inc., both of which are subsidiaries of Service Star International, Inc. One individual wholly owns Service Star USA, Inc., the above-named companies, and two other firms. The companies all perform commercial building services. Agency Report, Tab 35, Letter from Service Star USA, Inc. to Contracting Officer (May 5, 1999).

The protester argues that, based on the awardee’s one contract, the awardee should have been given a 0 for failing to meet the standard for past performance. Protester’s Comments at 7. The agency responds that it properly considered the parent company’s and its other subsidiaries’ contracts in its evaluation of Service

Star USA, Inc.'s performance. The agency cites FAR § 15.305 (a)(2)(iii) as the basis for its decision to consider these contracts. This provision provides in essence that a past performance evaluation "should [consider] information regarding predecessor companies, key personnel . . . , or subcontractors that will perform major or critical aspects of the requirement when such information is relevant." FAR §15.305(a)(2)(iii). The agency also points out that we essentially have taken the same position in prior cases. See, e.g., Fluor Daniel, Inc., B-262501, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12.

We have stated that in determining whether one company's performance should be attributed to another, an agency must consider the nature and extent of the relationship between the two companies--in particular, whether the workforce, management, facilities, or other resources of one may affect contract performance by the other. In this regard, while it would be inappropriate to consider a company's performance record where that record does not bear on the likelihood of successful performance by the offeror, it would be appropriate to consider a company's performance record where it will be involved in the contract effort or where it shares management with the offeror. NAHB Research Ctr., Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 4; Fluor Daniel, Inc., *supra*. In these decisions, the proposals clearly showed that the affiliate or other company had meaningful involvement in the performance of the contract. Here, the awardee's proposal does not establish this fact. We conclude that the agency did not reasonably evaluate the relationship of the companies for purposes of attributing the past performance of the parent company or its other subsidiaries to Service Star USA, Inc., and therefore could not consider four of the five contracts referenced by Service Star USA, Inc. in evaluating its past performance.

More specifically, there is no indication from the awardee's proposal that the parent company intends to use its workforce, management, facilities, or other resources in performing this contract. For example, GSA states that it relied in part on a corporate management chart in the awardee's technical proposal. The chart is not identified as Star Group International, Inc.'s management. We note that the narrative directly underneath the chart states that "Service Star is comprised of seasoned professionals." Agency Report, Tab 3, Service Star Contract and Supporting Documentation, at 88. Thus, it is not clear how the agency determined that this chart refers to the parent company's management. The chart certainly does not establish that the parent company's management or resources would be used for this contract. In fact, on the next page of the proposal is a specific organization chart for this contract. Although the president is the same for both companies (the awardee and its parent company), the director of operations and project manager are Service Star USA, Inc. personnel. *Id.* at 89. More importantly, four of the contracts described under past performance, as noted above, were performed by two other companies that GSA does not even argue are involved in this contract, and Star Group International Inc., the "umbrella company," did not perform any of the contracts

described in the awardee's proposal. Based on the record, we have no basis to conclude that any of these firms' past performance is relevant here.²

UBMI also protests the evaluation of its past performance. UBMI argues that it should have been given the highest score available--2 points--under past performance. Protester's Comments at 9-11. The record shows that three of five references for UBMI responded to questionnaires from GSA. The questionnaires, among other things, asked the references to rate overall performance. UBMI received two good ratings and one excellent rating. The evaluators then gave offerors a numerical rating of 0 (fails), 1 (pass), or 2 (exceeds) for past performance. The three evaluators gave UBMI scores of 1+, 2, and 1, and (without explanation) a consensus score of 1. Agency Report, Tab 34, UMBI Award Criteria Evaluation Sheets, at 19, 45-56. We note that, under the RFP, the standard for evaluation of past performance consisted of having to demonstrate performance on five comparable contracts and satisfactory past performance. RFP at 38. It appears that UBMI exceeded the former requirement, given the 18 GSA contracts it had, but there is no indication how this was accounted for in the evaluation. Further, the UBMI references support a conclusion of satisfactory past performance. In light of the

²The agency argues that this matter was addressed in the oral presentation. The record contains the awardee's "Oral Presentation Talking Points." This document is labeled on each page "Service Star USA, Inc." The quality control presentation identifies the awardee's director of operations, project manager, and working supervisor as the primary management staff. For plan of operation, a chart labeled "Program of Operations" is limited to Service Star USA, Inc. employees. Again, other references to managerial staff being assembled at Service Star corporate headquarters or to corporate staff appear to refer to the awardee. There is no specific statement of the parent company's role in contract performance. Agency Report, Tab 3, Service Star Contract and Supporting Documentation, at 92, 95, 104-108. In any event, we think that commitments provided at an oral presentation concerning the firms that would be providing the management and resources for the performance of the contract would be material to the contract and have to be put in writing. FAR § 15.102(f).

After the protest was filed, the agency received two letters from the president of the two companies attempting to confirm that the two companies will be sharing management and resources. These letters were not part of the evaluation record and not before the contracting officer when she made her award decision. Thus, we accord them little weight in determining the propriety of the evaluation and selection decision. See Spectrum Sciences & Software, B-280700, Nov. 9, 1998, 99-1 CPD ____ at 5 n.5; Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. In any event, these letters do not resolve the concerns that we have regarding the proposal not evidencing the parent company's involvement in this contract.

absence of documentation for the score assigned and in view of our decision to sustain the protest, we believe it would be advisable for the agency to reevaluate UBMI's past performance in order to ensure that its rating is appropriate.¹

We recommend that the agency reevaluate the past performance of the protester and awardee, properly document this evaluation, and perform and document a proper tradeoff analysis. If the agency believes that UBMI is nonresponsible, the matter should be referred to the SBA for COC consideration. If a different award determination results, the agency should terminate Service Star USA, Inc.'s contract for the convenience of the government. In addition, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (1999). The protester should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
of the United States

¹The protester objects to the agency's inability to contact the other two references. The agency, however, is only required to make a reasonable effort to contact the references, and it is not objectionable to evaluate an offeror's past performance based on less than the maximum possible number of references the agency could have received. See IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 6 (although agencies are required to evaluate the past performance of all offerors on the same basis, there is no general requirement that an agency contact all of an offeror's references, or contact the same number of references for each offeror).